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November 28, 2005

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Investigation by the Department of Telecommunications and Energy on its Own Motion to Increase the Participation Rate for Discounted Electric, Gas and Telephone Service Pursuant to G.L. c. 159, § 105 and G.L. c. 164, § 76, D.T.E. 01-106/05-55/05-56

Dear Secretary Cottrell:

On behalf of Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company d/b/a NSTAR Electric ("NSTAR Electric") and NSTAR Gas Company (together, the "Companies"), please find attached the Companies' Opposition to the Attorney General's Motion for Reconsideration of the Department of Telecommunications and Energy's October 14, 2005 order in this proceeding.

Please contact me or Jack Habib if you have any questions regarding this filing.

Very truly yours,

David S. Rosenzweig

cc: Jeanne Voveris, Hearing Officer
Joseph Rogers, Chief, Utilities Division, Office of the Attorney General
Colleen McConnell, Office of the Attorney General
Service List, D.T.E. 01-106

Enclosures

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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| Investigation by the Department of Telecommunications and Energy On its Own Motion Pursuant to G.L. c. 159, § 105 and G.L. c. 164, § 76 to Investigate Increasing the Penetration Rate for Discounted Electric, Gas and Telephone Service | ) ) ) ) ) | D.T.E. 01-106/ D.T.E. 05-55/ D.T.E. 05-56 |

# OPPOSITION OF NSTAR TO ATTORNEY GENERAL'S MOTION FOR RECONSIDERATION

## I. INTRODUCTION

On November 4, 2005, the Office of the Attorney General ("Attorney General") filed with the Department of Telecommunications and Energy (the "Department") a Motion for Reconsideration (the "Motion") of the Department's October 14, 2005 order (the "Order") in this proceeding. The Order established a uniform methodology for electric and gas companies to recover lost revenues associated with increased participation on utility discount rates and directed the companies to file Residential Assistance Adjustment Clause ("RAAC") tariffs consistent with the Department's revenue recovery methodology. Order at 8, 15.

The Attorney General asked the Department to reconsider whether: (1) the cost recovery mechanism established in the Order is the appropriate mechanism for companies to recover costs associated with discount rate enrollment; (2) the new mechanism conforms to the Department's directives in D.T.E. 01-106-B; (3) the disparity in recovery amounts among utilities renders the tariff "defective"; and (4) the use of the prime interest rate and the lack of refund of any baseline amount to customers serves the

public interest. On November 5, 2005, the Attorney General supplemented the Motion with an Affidavit of Timothy Newhard.[1]

In summary, Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company, d/b/a NSTAR Electric and NSTAR Gas Company (together, "NSTAR") request that the Department deny the Attorney General's Motion. The Attorney General's Motion fails to meet the Department's standard of review for reconsideration in that it neither: (1) establishes any previously unknown or undisclosed facts that would have an impact on the Order; nor (2) demonstrates that the Order was the product of a mistake or inadvertence. Moreover, contrary to the Attorney General's allegations, the Department's procedure for approving discount rate adjustment tariffs for the electric and gas companies was consistent with precedent. Accordingly, the Department should deny the Attorney General's Motion for the reasons presented below.

## II. STANDARD OF REVIEW

The Department's standard for reviewing a motion for reconsideration and clarification of its decisions is well established. Reconsideration of previously decided issues is granted only when circumstances dictate that the Department take a fresh look at the record for the purpose of modifying a decision reached after review and deliberation. Consolidated Arbitrations, Phase 4-M at 5 (1999), citing North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987). Rather than simply rearguing issues considered and decided, a motion for reconsideration must bring to light

[1] On November 15, 2005, the Hearing Officer in this proceeding issued a Memorandum establishing a deadline of November 28, 2005 for parties to submit comments in response to the Motion.

previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. Consolidated Arbitrations, Phase 4-M at 5 (1999), citing Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983).

In the alternative, a motion for reconsideration may be granted if it is shown that the Department's disposition of an issue was the product of mistake or inadvertence. Consolidated Arbitrations, Phase 4-M at 5 (1999), citing Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983). Reconsideration also may be appropriate where parties have not been "given notice of the issues involved and accorded a reasonable opportunity to prepare and present evidence and argument" on an issue decided by the Department. Petition of CTC Communications Corp., D.T.E. 98-18-A at 2, 9 (1998).

## III. THE ATTORNEY GENERAL'S MOTION FAILS TO MEET THE DEPARTMENT'S STANDARD OF REVIEW FOR RECONSIDERATION AND SHOULD BE DENIED

The Attorney General bases his Motion on the following allegations: (1) a change in the formula of the RAAC tariffs requires full evidentiary hearings; (2) there is no uniformity in the companies' recovery mechanisms; (3) Department precedent requires a baseline reflecting test-year data; (4) some companies will over-collect lost revenues at the expense of non-low-income customers; and (5) interest on over- or under-recoveries should accrue at the customer deposit rate, rather than the prime rate (Motion at 4, 5, 7, 8). As discussed below, the Attorney General's allegations do not meet the

Department's standard of review for reconsideration. Moreover, the Attorney General's allegations are not supported by either statute or Department precedent. Accordingly, the Department should deny the Attorney General's Motion.

### A. Adjudicatory Proceedings Are Not Required in Order for the Department to Adopt Residential Assistance Adjustment Clause Tariffs.

The Attorney General alleges that "an adjudicatory proceeding" for each gas and electric company is required before the Department may approve RAAC tariffs that include a Residential Assistance Adjustment Factor ("RAAF") formula that would allow "cost recovery" associated with discount rates (Motion at 4). The Attorney General apparently bases his claim on his interpretation of the Supreme Judicial Court's (the "Court") holding in Consumer Organization For Fair Energy Equity, Inc. v. Department of Public Utilities, 368 Mass. 599, 606 (1975) (id. at 4-5) ("COFFEE"). Specifically, the Attorney General cites the COFFEE decision in an effort to support his contention that "[a]ny proposals to initiate formula reconciling tariffs that increase rates must be subject to a hearing before the Department under G.L. c. 164, § 94, to set just and reasonable rates" (id. at 4). However, the Attorney General has misstated both the Court's holding in COFFEE and the statutory language on which the decision is based.

The Attorney General contends that the COFFEE decision stands for the proposition that "any" proposal to initiate formula-based reconciling tariffs "that increase rates" must be subject to a hearing before the Department under G.L. c. 164, § 94 ("Section 94"). On the contrary, the COFFEE decision was focused narrowly on whether hearings were necessary pursuant to Section 94 in the context of proposed fuel cost

increases through electric company fuel adjustment clause tariffs. COFFEE at 601. Notably, the Court determined that they were not. Id. at 605-608.

Moreover, the Court explicitly stated that its rationale did not address "the point that an increase under a fuel adjustment clause, even if an increase within the quoted amendatory language [of Section 94], might not be a 'general' increase" in rates that may trigger the public hearing provisions of Section 94. Id. at 604, n.7. By doing so, the Court acknowledged that implementing a cost-based reconciling rate mechanism does not trigger a requirement for the Department to hold a hearing. Section 94 limits the need for a public hearing to filings that propose changes to a schedule filed under Chapter 164 "which represent *a general increase in rates*." G.L. c. 164, § 94.

The filing of RAAFs in the instant proceeding does not represent a general increase in rates, but rather, allows gas and electric companies the opportunity to adjust their distribution rates as they relate to the recovery of discount rate revenue only, and only until a company's next rate case. D.T.E. 01-106-C/D.T.E. 05-55/D.T.E. 05-56, at 7-8. Such adjustments will occur only to the extent of increased participation on discount rates over the twelve-month baseline period ending June 30, 2005. In any given year, a RAAF tariff may result in no adjustment at all, to the extent that the lost revenues during a reconciliation period are no greater than the lost revenues realized by a company during the baseline period. Id. at n.3. Accordingly, RAAC tariffs, and the RAAF methodology approved by the Department, do not represent a general increase in rates for customers that trigger the hearing provisions of Section 94.

Moreover, contrary to the allegations of the Attorney General, even if the RAAC tariffs represented a "general increase" in base rates, Section 94 does not support his

contention that the implementation of RAAF formulae requires adjudicatory proceedings. Section 94 requires only that the Department "hold a *public* hearing and make an investigation" (emphasis added) as to the propriety of changes to rate schedules that represent a general increase in rates. The Department, in fact, held a public hearing in this proceeding on September 16, 2005 which was attended by an Assistant Attorney General.

Further, the Department conducted an extensive multi-year investigation in this docket, and related dockets, of the propriety of various RAAF methodologies, during which the Attorney General filed two sets of comments and participated in a September 14, 2005 technical session at the Department with the electric and gas companies specifically on the ratemaking issues regarding cost recovery alternatives.[2] See D.T.E. 01-106-C/D.T.E. 05-55/D.T.E. 05-56, at 1-3, citing in part, Comments of the Attorney General on the Department's proposed Alternative Methodology (September 30, 2005); see also D.T.E. 01 -106-B/D.T.E. 05-55/D.T.E. 05-56, Comments of the Attorney General (September 14, 2005). Accordingly, although the implementation of RAAFs do not represent a general increase in rates that would, by statute, require a public hearing, the Department's procedure in this docket nevertheless has been consistent with the requirements of Section 94 in that, prior to approving the tariffs, the Department held a public hearing and conducted a full investigation into the propriety of the RAAC tariffs filed by the electric and gas companies in this proceeding.[3]

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2 To the Companies' knowledge, the Attorney General did not raise his preference for evidentiary hearings in this proceeding until the filing of the Motion.

3 The Department could also determine in the future that hearings are appropriate at such time when the electric and gas companies file their respective annual RAAF reconciliations.

The Attorney General's procedural allegations neither raise new facts nor support an argument that the Department's procedure in this proceeding represented a mistake that warrants reconsideration of the Order. Accordingly, the Department should deny the Attorney General's Motion as it relates to these contentions.

**B. The Lost Revenue Recovery Mechanisms Are Uniform in Design.**

The Attorney General also contends that the RAAC tariffs resulting from the Order are not "uniform" or revenue neutral (Motion at 5). First and foremost, contrary to the Attorney General's allegations, the RAAF mechanisms are uniform in that they each are consistent with the Department's "Alternative Methodology" proffered by the Department on September 27, 2005. The Department has properly allowed companies to prepare their RAAC tariffs using the formatting and narrative style that they use in their other Department-approved tariffs. However, non-substantive differences in tariff formatting or narrative style among the companies' RAAC tariffs do not represent a lack of uniformity in the methodology for calculating RAAF factors.

Moreover, the Alternative Methodology specifically delineates consistent categories of discount rate-related costs that are allowed to be recovered through a RAAF. Therefore, the implementation of the gas or electric company tariffs will yield similar results for their respective customers because the types of costs allowed to be collected by any one company are the same for all gas and electric companies. Accordingly, the Attorney General's contentions regarding an alleged lack of uniformity among the RAAC tariffs are inapt and do not represent a new allegation or a mistake that would warrant reconsideration of the Order.

### C. The RAAF Baseline Established by the Department Is Consistent with D.T.E. 01-106-B.

The Attorney General further challenges the Department's Order as it relates to the methodology for establishing a baseline of discount rate-related lost revenues against which any incremental discount rate-related lost revenues would be compared to calculate a RAAF. Specifically, the Attorney General alleges that the Department's decision to establish a baseline for calculating the RAAF by using lost discount rate revenues collected in base rates for the twelve months ending June 30, 2005 is inconsistent with Department precedent (Motion at 6-7). However, the Department has already fully addressed the Attorney General's position on this issue in the Order and rejected his requested methodology for calculating a baseline for the RAAF. Moreover, contrary to the Attorney General's contention, the Department's methodology for establishing a baseline for the RAAF is consistent with the Department's order in D.T.E. 01-106-B.

With respect to the first point, the Attorney General has neither alleged any new facts (or arguments) since his September 30, 2005 comments on this topic (see Attorney General Comments at 2-3) nor has he suggested that the Department's baseline methodology was established through mistake or inadvertence. Rather, the Attorney General is merely rearguing in his Motion his prior comments. The Department addressed these comments in the Order, noting that the Attorney General's proposed methodology for establishing a baseline (i.e., use discount rate revenues collected through base rates as of a company's last rate case and update the figure for recent sales and newly recognized customers) would not "improve the accuracy of the calculation of the baseline amount" over the Department's own methodology. Order at 10. Therefore, the

Department considered the Attorney General's contention on this issue, but determined that its own methodology was easier to administer. Accordingly, the Attorney General's request to reconsider this aspect of the Order should be denied because the request fails to meet the Department's standard for reconsideration.

Moreover, contrary to a related contention of the Attorney General, the Department's methodology is consistent with its order in a prior phase of this proceeding, D.T.E. 01-106-B. As noted by the Attorney General, the Department's D.T.E. 01-106-B order directed companies to propose a reconciliation factor based on the difference between forecasted discount rate-related lost revenues and "the amount of the low-income subsidy that was approved in the company's last rate case or settlement, adjusted for any changes in sales and the number of low-income customers as of the effective date of the computer matching program." D.T.E. 01-106-B at 9-10. The Department's Alternative Methodology accomplishes this by allowing companies to use their actual discount rate-related lost revenues during the period of July 1, 2004 to June 30, 2005 as a baseline for determining whether an RAAF adjustment is justified. A company's actual discount rate-related lost revenues during any given period of time are calculated based on the discount rate-related prices allowed in rates from a company's last rate case (or settlement), adjusted using actual discount rate sales and customers during that time period. Accordingly, the Department's methodology for determining a RAAF baseline includes the same three variables articulated by the Department in D.T.E. 01-106-B, and thus, is totally consistent with that order, contrary to the allegations of the Attorney General.

### D. The Attorney General's Allegations Regarding Potential Overcollections of Discount Rate Lost Revenues Are Unsupported and Insufficient to Warrant Reconsideration.

The Attorney General's Motion contends that the Department's RAAF methodology will "exacerbate" "overcollections" in discount rate lost revenues identified by the Attorney General in the gas and electric companies' respective responses to Department discovery in this proceeding. See D.T.E. 01-106/D.T.E. 05-55/D.T.E. 05-56 (Information Request DTE-1-1). The Attorney General cites in support of his contention the provision in the Department's RAAF methodology that does not provide for refunds to customers in the event that a company's discount rate lost revenue in a given reconciliation period is below the company's baseline discount rate lost revenues (Motion at 8).

The Attorney General's allegation fails to allege new facts or information that would warrant reconsideration of this aspect of the Department's RAAF methodology. Similar to other allegations raised by the Attorney General in his Motion, the Department addressed this issue in the Order. The Department noted that that its Alternative RAAF Mechanism is not intended to displace the ebb and flow of traditional ratemaking where revenues from the discount rate program are designed to be recovered from all customers through base rates. Order at 11. Instead, the mechanism is intended to address short-term potential revenue shortfalls that may occur because of a change in the Department's discount rate outreach policy that was neither known nor measurable when base rates

were established for each gas and electric company.[4] Id. Accordingly, it is not determinative whether a company is currently experiencing an over-collection in discount rate lost revenues in establishing an RAAF. Over-collections and under-collections in discount rate revenues have likely been realized by each gas and electric company since their last respective rate cases, and will likely be realized over time until each company's next rate case. The Department's RAAF mechanism merely allows collection of incremental lost revenues from the baseline period cause by increased discount rate participation associated with the Department's computer matching program with EOHHS and other related initiatives. Therefore, the Attorney General's request for reconsideration of this aspect of the Order should be denied.

### E. The Department's Decision to Allow Interest to Accrue at the Prime Rate Is Consistent with Precedent and Uniform in Application.

The Attorney General requests that the Department reconsider its decision to allow interest to accrue on any over-or under-recoveries of incremental discount rate lost revenues using the prime interest rate (Motion at 9). However, the Attorney General cites no new facts or alleges a mistake that would warrant reconsideration of this provision. As noted by the Department in its order, gas companies are required by the Department's regulations at 220 C.M.R. § 6.08(2) to use the prime rate to calculate interest relating to gas cost over- and under-recoveries. In addition, the Department has approved the use of the prime rate for interest relating to electric company reconciliation mechanisms. See

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[4] In addition to lost revenues associated with the implementation of the new EOHHS computer matching program, the Department's Alternative Methodology appropriately contemplates additional incremental discount rate-related lost revenues to be realized over the coming months because of new statutory requirements for the electric and gas companies to develop comprehensive arrearage management programs and to expand the eligibility for discount rates to those customers of record with income up to 200 percent of the federal poverty level. None of these initiatives or policies was effective at the time of the Companies' last base rate cases.

Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company d/b/a NSTAR Electric, D.T.E. 03-47-A at 45; see also Boston Edison Company, D.P.U. 85-1C at 14 (1985).

Moreover, the Department has directed every gas and electric company to use the prime rate for interest calculations relating to over- and under-recoveries, thus fulfilling the Attorney General's otherwise applicable recommendation that the Department's RAAF methodology be implemented uniformly (see Motion at 5). Accordingly, the Department should deny the Attorney General's request for reconsideration of this aspect of the Order.

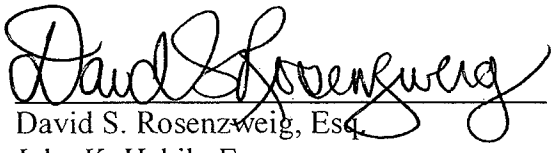
## IV. CONCLUSION

For the foregoing reasons, the Department should deny the Attorney General's Motion for Reconsideration.

Respectfully submitted,

**BOSTON EDISON COMPANY**
**CAMBRIDGE ELECTRIC LIGHT COMPANY**
**COMMONWEALTH ELECTRIC COMPANY**
**NSTAR GAS COMPANY**

By their Attorneys,



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Dated: November 28, 2005